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5 RAUL VEGA,
6 Petitioner,
7 v.
8 WARREN L. MONTGOMERY, Warden,
9 Respondent.

10 Case No. [16-cv-05145-DMR](#) (PR)

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**ORDER GRANTING IN FORMA
PAUPERIS STATUS AND DIRECTING
RESPONDENT TO SHOW CAUSE
WHY THE PETITION SHOULD NOT
BE GRANTED**

Petitioner, a state prisoner, has filed this *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Dkts. 1, 6.¹ Petitioner has also filed a motion for leave to proceed *in forma pauperis*. This action has been assigned to the undersigned Magistrate Judge.

Pursuant to 28 U.S.C. § 636(c), with written consent of all parties, a magistrate judge may conduct all proceedings in a case, including entry of judgment. Appeal will be directly to the United States Court of Appeals for the Ninth Circuit. *See* 28 U.S.C. § 636(c)(3).

On September 7, 2016, Petitioner consented to magistrate judge jurisdiction in this matter. Dkt. 1 at 6.

It does not appear from the face of the petition that it is without merit. Good cause appearing, the court hereby issues the following orders:

1. Petitioner's application to proceed *in forma pauperis* is GRANTED.
2. The Clerk of the Court shall serve a Magistrate Judge jurisdiction consent form, a copy of this Order, as well as the petition and all attachments thereto upon Respondent and

¹ Petitioner's initial filing was missing the first page. Dkt. 1. Therefore, the Clerk of the Court instructed Petitioner to fill out the first page of a blank habeas petition form. Dkt. 4. Thereafter, Petitioner filed a completed first page of his petition. Dkt. 6.

1 Respondent's attorney, the Attorney General of the State of California. The Clerk shall also serve
2 a copy of this Order on Petitioner at Petitioner's current address.

3 3. Within **twenty-eight (28) days** of the issuance of this Order, Respondent shall
4 complete and file the Magistrate Judge jurisdiction consent form to indicate whether Respondent
5 consents or declines to proceed before the assigned Magistrate Judge. Respondent is free to
6 withhold consent without adverse consequences. If Respondent consents to a Magistrate Judge's
7 jurisdiction, this case will be handled by the undersigned Magistrate Judge. If Respondent
8 declines, the case will be reassigned to a District Judge. Whether Respondent consents or declines
9 to proceed before the assigned Magistrate Judge, the parties shall abide by the briefing schedule
10 below.

11 4. Respondent shall file with this court and serve upon Petitioner, within **sixty (60)**
12 **days** of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules
13 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued.
14 Respondent shall file with the Answer a copy of all portions of the relevant state records that have
15 been transcribed previously and that are relevant to a determination of the issues presented by the
16 petition.

17 5. If Petitioner wishes to respond to the Answer, Petitioner shall do so by filing a
18 Traverse with the court and serving it on Respondent within **twenty-eight (28) days** of
19 Petitioner's receipt of the Answer. Should Petitioner fail to do so, the petition will be deemed
20 submitted and ready for decision **twenty-eight (28) days** after the date Petitioner is served with
21 Respondent's Answer.

22 6. Respondent may file with this court and serve upon Petitioner, within **sixty (60)**
23 **days** of the issuance of this Order, a motion to dismiss on procedural grounds in lieu of an
24 Answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section
25 2254 Cases. If Respondent files a motion to dismiss, Petitioner shall file with the court and serve
26 on Respondent an opposition or statement of non-opposition to the motion within **twenty-eight**
27 **(28) days** of receipt of the motion, and Respondent shall file with the court and serve on Petitioner
28 a reply within **fourteen (14) days** of receipt of any opposition.

1 7. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the
2 court and Respondent informed of any change of address and must comply with the court's orders
3 in a timely fashion. Pursuant to Northern District Local Rule 3-11 a party proceeding *pro se*
4 whose address changes while an action is pending must promptly file a notice of change of
5 address specifying the new address. *See L.R. 3-11(a)*. The court may dismiss a *pro se* action
6 without prejudice when: (1) mail directed to the *pro se* party by the court has been returned to the
7 court as not deliverable, and (2) the court fails to receive within sixty days of this return a written
8 communication from the *pro se* party indicating a current address. *See L.R. 3-11(b); see also*
9 *Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).
10 Petitioner must also serve on Respondent's counsel all communications with the court by mailing
11 a true copy of the document to Respondent's counsel.

12 8. Upon a showing of good cause, requests for a reasonable extension of time will be
13 granted provided they are filed on or before the deadline they seek to extend.

14 IT IS SO ORDERED.

15 Dated: November 8, 2016



16 DONNA M. RYU
17 United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RAUL VEGA,
Plaintiff,
v.
UNKNOWN, et al.,
Defendants.

Case No. 4:16-cv-05145-DMR

CERTIFICATE OF SERVICE

UNKNOWN, et al.,
Defendants.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 8, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Raul Vega ID: AN9920
P.O. Box 5007
Calipatria, CA 92233-5007

Dated: November 8, 2016

Susan Y. Soong
Clerk, United States District Court

By: Ivy Lerma Gatica, Deputy Clerk to the
Honorable DONNA M. RYU